IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.843 OF 2006
IN
CHAMBER SUMMONS NO. OF 2006
IN
B.C.C.C. S.C. SUIT NO.4962 OF 2006
WITH
CIVIL APPLICATION NO.1161 OF 2006

Mr.Ajay Mohan & Ors. ...Appellants

Versus

Mr.H.N.Rai & Ors. ...Respondents

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S/Shri S.Aney, Sr.Counsel with Milind Sathe, Sr.Counsel, Abhay Abhyankar, Sr.Counsel, P.K.Shroff & Ms.Prachi Khandge i/b M/s.Parimal K.Shroff & Co. for Appellants.

S/Shri Navin Parikh with Rohit Kapadia, Pradeep Sancheti & Rahul Rao for Respondents 1, 2 & 4 to 15.

Mr.M.V.Limaye for Respondent No.3.

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CORAM: A.M.KHANWILKAR, J.

JANUARY 10, 2007.

P.C.

1. Heard Counsel for the parties.

2. I see no reason to depart from the view taken by the Trial Court in rejecting the prayer for continuing the order of status-quo as was

pressed before the lower Court in the pending Chamber Summons.

3. In the first place, the Appellants having withdrawn the earlier Appeal challenging the decision of the Trial Court passed on application for interim injunction during the pendency of the Suit, have allowed the said decision to become final. The limited liberty granted to the Appellants by this Court as per the order dated 23rd November 2006, was to move the Trial Court for amendment of the Plaint. Assuming that the Appellants while applying for amendment of the Plaint to the Trial Court were also entitled to renew the prayer for grant of interim relief during the pendency of the Suit, the question of granting such relief would arise only if the Appellants were to seek appropriate relief by way of amendment in the light of observations made by the Trial Court *inter alia*, in Paragraph 39 of the Judgment and Order dated 13th October 2006 - which decision was made subject matter of Appeal from Order No.810 of 2006. As aforesaid, that Appeal came to be withdrawn as not pressed by the Appellants with

liberty to move the Trial Court for amendment of the Plaint. In other words, keeping in mind the observations made by the Trial Court in the earlier order dated 13th October 2006, unless the Appellants were to seek relief of challenging the Agreement of Sale dated 23rd October 1969, the Appellants cannot be heard afresh on the point of interim relief by the Trial Court. The proposed amendment, however, is short of relief of declaration that the suit Agreement is null and void and to be set-aside. The proposed relief claimed by the Appellants by way of amendment, reads thus :

> "(a)(i) that it may be declared that the Defendants or any of them have no right, title or interest of any nature in respect of the plots of land bearing at C.T.S.Nos.6A and 7/1A of village Powai, Taluka-Kurla admeasuring about 37,673 Sq.Mtrs. and C.T.S.Nos.20 and 22 of Village Tirandaz, Taluka Kurla admeasuring about 27,582 Sq.Mtrs. or any part/s thereof by virtue of the alleged Agreement for Sale dated 23rd October 1969, being Exhibit "A10" hereto or otherwise or at all;
>
> (a)(ii) that the Defendants, their servants and agents may be permanently restrained by an Order and injunction of this Hon'ble Court from claiming any right, title or interest of any nature in

respect of the plots of land bearing at C.T.S.Nos.6A and 7/1A of village Powai, Taluka- Kurla admeasuring about 37,673 Sq.Mtrs. and C.T.S.Nos.20 and 22 of Village Tirandaz, Taluka Kurla admeasuring about 27,582 Sq.Mtrs. or any part/s thereof by virtue of the said alleged Agreement for Sale dated 23rd October, 1969 being Exhibit "A-10" hereto or otherwise or at all."

4. To get over this position, Counsel for the Appellants submits that Appellants were not admitting the existence of the Agreement dated 23rd October 1969 and for that reason it was not necessary for the Appellants to seek declaration that the said Agreement is null and void and be set-aside. I am not impressed by this argument. The Counsel for the Respondents has rightly invited my attention to the averments made in Paragraph 15 of the Plaint on page 172, where the Appellants have sought leave under Order II Rule 2 of the Code of Civil Procedure, 1908 to omit to sue the Defendants for declaration that the suit documents, namely, Agreement for Sale and Powers of Attorney are forged, fabricated and invalid and required to be revoked, cancelled and set-aside. This indicates that the Appellants were conscious that

such relief will have to be pressed in respect of the suit documents. Obviously, that perception is on account of the fact that the said documents were made subject matter of proceedings before the Revenue Authorities. Indeed, the Respondents have stated on affidavit that the original copy of the said document has been lost in respect of which police complaint is already instituted. In such a case, however, it is possible for the Respondents to establish the fact of existence of such Agreement by relying on secondary evidence on fulfilling the required norms in that behalf. Be that as it may, prima facie, it is seen from the record that the execution of the suit documents has been disputed by the Appellants as back as in 1984, which stand has been dealt with by the Authorities. Suffice it to observe that the Appellants would succeed only if they were to challenge the subject Agreement, inasmuch as the Defendants were asserting rights in respect of the suit land on the basis of the said Agreement. The fact that the original copy of the said Agreement is not in existence, does not alter the situation so as to absolve the Appellants from claiming relief that

the said Agreement is null and void and to set it aside.

5. In my opinion, the Trial Court, in substance, has noted in Paragraph 6 of the impugned

Judgment that there was no changed situation to reconsider the prayer for interim relief. That is the correct approach. In other words, the question of reconsidering the prayer for interim relief would have arisen only if the Appellants were to ask for full, complete and effectual relief with regard to the Agreement in question, dependent on which, could get incidental relief.

6. Taking into consideration all these facts and circumstances, in my opinion, no interference is warranted. Hence the Appeal deserves to be dismissed. Accordingly, Appeal is dismissed.

7. In view of the above order, Civil Application also stands disposed of.

8. At this stage Mr.Aney for the Appellants

submits that this order should not preclude the Appellants from seeking further appropriate reliefs to amend the Plaint including challenging the alleged Agreement, if so advised, which issue will have to be decided on its own merits. This submission is accepted.

9. Counsel for the Appellants submits that as the Appellants are inclined to take the matter in appeal to the Apex Court, the Defendants be restrained from creating third party rights in respect of the suit property for a reasonable period. Counsel for the Defendants, on instruction, states that the Defendants have no intention to create third party rights at least for a period of two weeks from today. In view of this statement, there is no need to consider request made by the Counsel for the Appellants. Ordered accordingly.

A.M.KHANWILKAR, J.